

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawai'i 96813

June 8, 2007

Board of Land
and Natural Resources
Honolulu, Hawai'i

REQUEST APPROVAL OF SPECIAL TERMS AND CONDITIONS, FOR PERMITTED ACTIVITIES
WITHIN THE NORTHWESTERN HAWAIIAN ISLANDS - PAPAHAŌNAUMOKUĀKEA MARINE
NATIONAL MONUMENT AS DEFERRED FROM THE MAY 25, 2007 LAND BOARD MEETING

SYNOPSIS:

The Division of Aquatic Resources (DAR) working in coordination with the legal advisors to the Papahānaumokuākea Marine National Monument recommends the adoption of the revised general and special terms and conditions contained in the joint permit form template. At the April 27, 2007 meeting of the Board of Land and Natural Resources (Board), the Board approved and adopted a joint permit form for permitted activities within the Northwestern Hawaiian Islands developed collaboratively by the Division of Aquatic Resources (DAR), working in concert with the State of Hawai'i's Co-Trustees to the Papahānaumokuākea Marine National Monument. The joint permit form template replaces the previous State permit form template issued for permitted activities within the Northwestern Hawaiian Islands State Marine Refuge pursuant to Chapter 13-60.5, HAR. While the Board approved the new joint permit form, it directed DAR to review all permit conditions that had been applied to the NOAA application for a permit approved at the January 26, 2007 Land Board meeting. The Board requested that DAR ensure that all these permit conditions were consistent with the joint permit form general and special conditions. At its May 25, 2007 meeting, the Board approved the revised Papahānaumokuākea Marine National Monument Joint Permit Form.

LEGAL REFERENCES:

Hawai'i Revised Statutes (HRS) §§ 171-6(3) and (8), as amended;
Hawai'i Administrative Rules (HAR) Chapter 13-60.5;
Presidential Proclamation 8031: MOA among the State of Hawai'i DLNR, and the U.S. Dept. of the Interior USFWS, and the U.S. Department of Commerce, NOAA for Promoting Coordinated Management of the Northwestern Hawaiian Islands Marine National Monument; 50 CFR Part 404

LOCATION:

The Papahānaumokuākea Marine National Monument (Monument) consists of all land and interest in lands owned or controlled by the Government of the United States within the Monument, including emergent and submerged land and waters of the Northwestern Hawaiian Islands (NWHI).

DISCUSSION:

The joint permit form terms and conditions have undergone intense scrutiny and an extensive process of review over the past five months, in consultation and conjunction with staff and counsel from the White House Council on Environmental Quality, U.S. Departments of Commerce, Interior, and Justice; the

Office of Hawaiian Affairs, the Department of the Attorney General, and representatives from the Co-Trustee agencies. A comparison of specific terms and conditions contained in prior State NWHI permits was also undertaken to ensure that all these terms and conditions were either incorporated into the general conditions contained in the joint permit form, or were revised as special conditions. A comparison matrix of the former State conditions and the joint permit conditions was provided to the Board at the April 27, 2007 Board meeting. Many similar concerns addressed in prior State permit conditions, such as documenting activities while in the Monument, curtailing of commercial exploitation of resources and the like were revised and incorporated into the joint permit conditions. Upon further review of these former State conditions, minor changes were made to the previously approved joint permit form (Attachment 1). In addition, a revised set of special conditions, which were based on the former State permit conditions, has been further vetted and reviewed and are contained therein as Attachment 2. These special terms and conditions are consistent with former conditions applied to previous State permits. As is summarized in Attachment 3, these special terms and conditions are to be applied based on the type of activity proposed in the permit application for a specific class of permits.

RECOMMENDATIONS:

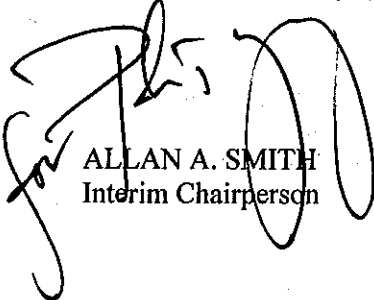
1. That the Board approve the Legally Vetted Special Terms and Conditions that will be used in concert with the general conditions now contained in the Joint Permit Form as applicable and based on the proposed activities in the permit application.
2. That the Board recognize that the Joint Permit General Conditions together with the revised Special Conditions are consistent with the former conditions on the State NWHI Refuge Permit.

Respectfully submitted,



DAN POLHEMUS
Administrator

APPROVED FOR SUBMITTAL



ALLAN A. SMITH
Interim Chairperson